

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

R AND R SURGICAL INSTITUTE,

Plaintiff,

v.

CIGNA HEALTH AND LIFE  
INSURANCE COMPANY et al.,

Defendants.

Case No. 2:23-cv-06919-SB-AGR

ORDER TO SHOW CAUSE RE:  
LACK OF PROSECUTION AND  
ORDER CONTINUING THE  
MANDATORY SCHEDULING  
CONFERENCE TO SEPTEMBER  
29, 2023

On August 22, 2023, Defendant CIGNA Health and Life Insurance Company removed the case, asserting that it was the only Defendant who had been served at that time. Dkt. No. [1](#). On September 14, 2023, Plaintiff filed a proof of service indicating that Defendant Data iSight was served on August 4, 2023, and its responsive pleading was due on August 25, 2023.<sup>1</sup> Dkt. No. [13](#). Although 28 U.S.C. § [1446\(b\)\(2\)\(A\)](#) requires that all defendants properly joined and served join in or consent to removal, failure to comply is a procedural defect, *see Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988). And Plaintiff, who must challenge any procedural defect within 30 days of removal, or by September 21, 2023, *see* 28 U.S.C. § [1447\(c\)](#), has not moved to remand.

Data iSight has failed to timely respond to service, and Plaintiff has not sought entry of default. Plaintiff is therefore ordered to show cause, in writing, no

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<sup>1</sup> The proof of service indicates that the documents were received by Data iSight on August 2, 2023, *see* Dkt. No. [13](#), and the joint stipulation asserts that it was served on July 25, 2023, Dkt. No. [14](#), but the difference is immaterial for purposes of this order.

later than Friday, September 22, 2023, why its claims against Data iSight should not be dismissed for lack of prosecution. The Court will consider as an appropriate response to this order to show cause (OSC) the filing, on or before September 22, 2023, of an application for entry of default under Federal Rule of Civil Procedure [55\(a\)](#). The filing of such an application shall result in the automatic discharge of this OSC without further order. Failure to timely respond to the OSC will be deemed consent to the dismissal without prejudice of Plaintiff's claims against Data iSight.

As to the parties' stipulated request to continue the mandatory scheduling conference (MSC), Dkt. No. [14](#), the Court grants it in part, continuing the MSC to September 29, 2023, at 8:30 a.m. in Courtroom 6C. The parties should not expect any further continuance of the MSC.

IT IS SO ORDERED.

Date: September 18, 2023

A handwritten signature in black ink, appearing to read 'S. Blumenfeld', is written over a horizontal line.

Stanley Blumenfeld, Jr.  
United States District Judge